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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OCT 31 2007

Uniform Issue List: 408.03-00

Taxpayer A =

Financial Advisor B =

Financial Advisor C =

Amount C =

IRA X =

State M =

Date 1 =

Date 2 =

Dear :

This is in response to your letter dated November 14, 2006, as supplemented by additional correspondence dated March 13, 2007, April 4, 2007, and April 26, 2007, as submitted by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

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The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 84, represents that on Date 1, acting on the advice of Financial Advisor B, he withdrew Amount C from IRA X and deposited Amount C in his personal account. Taxpayer A represents that he failed to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code due to a financial error by Financial Advisor B. Taxpayer A further represents that Amount C is invested in liquid assets and could be moved at anytime.

Financial Advisor B, a licensed and practicing CPA in State M, advised Taxpayer A to take all of his funds out of IRA X to find a better investment, but failed to inform him of the 60-day rollover requirement. Financial Advisor B was age 86 at the time and had been Taxpayer A's tax preparer and advisor for over 55 years. Relying on Financial Advisor B's advice, on Date 1, Taxpayer A requested and received a distribution of Amount C from IRA X. On Date 2, Taxpayer A sought a second opinion from Financial Advisor C on his decision to liquidate IRA X. Financial Advisor C advised Taxpayer A that the advice to take a distribution without completing a rollover was incorrect from both a financial and tax perspective and that erroneous advice had been made by Financial Advisor B.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount C.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such

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individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented by Taxpayer A demonstrates that Taxpayer A relied on the advice of Financial Advisor B and took a distribution of Amount C from IRA X based on the erroneous advice of Financial Advisor B. Financial Advisor B is a licensed and practicing CPA, who was aware of the tax ramifications of his advice. Based on the financial error of Financial Advisor B, Taxpayer failed to accomplish a timely rollover of Amount C.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service waives the 60-day rollover requirement with respect to the distribution of Amount C from IRA X. You are granted a period of 60 days from the date of issuance of this letter to rollover Amount C

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into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code (except the 60-day requirement) are met with respect to Amount C such amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact _____, at

Sincerely yours,



, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: